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Ng Chok Ling v Abdul Gaffar Khan bin Amirullah

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HIGH COURT (SHAH ALAM) — CIVIL SUIT NO BA-23NCvC-58–11 OF 2023
HAZIZAH KASSIM JC
2 JUNE 2025

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Local Government — Buildings — Building without approval — Plaintiff after submitting complaint to local authority filed court action for order to demolish illegal structure constructed by defendant on wall dividing his property from plaintiff's — Whether dealing with such illegal construction was the responsibility of local authorities under the law — Whether court would not issue any demolition order until local authority had evaluated the construction based on expert assessment and discharged its powers under the law — Whether any party dissatisfied with local authority's decision could challenge it by way of judicial review

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The plaintiff and defendant were neighbours in a housing estate. The defendant's house was located directly behind the plaintiff's property and was one floor above it. The two properties were separated by a retaining wall. In the instant suit, the plaintiff sought for, inter alia, an order that the defendant: (a) demolish a wall that he had constructed upon the retaining wall; (b) repair or replace an awning on the plaintiff's property that was allegedly damaged by the defendant's workers; (c) pay damages for trespassing onto the plaintiff's property; and (d) pay damages for the diminution in market value of the plaintiff's property and the opportunity cost associated with the sale of the plaintiff's property. The defendant admitted that the structure he had built upon the retaining wall was not approved by the local authority ('MBPJ'). He also admitted that his workers had damaged the plaintiff's awning. Apart from filing the instant suit, the plaintiff had lodged complaints about the defendant's illegal structure with the MBPJ and the housing estate's management authority.

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Held, ordering the defendant to pay the plaintiff RM50,000 as general damages for trespassing onto the plaintiff's property and to repair the damaged awning on the plaintiff's property and dismissing all other claims:

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(1) Given the defendant's admissions, the plaintiff's claim for trespass was allowed and the defendant was also ordered to repair the damage caused to the plaintiff's awning. The claim for special damages was not allowed as sufficient proof for them was not adduced (see paras 86–88, 90 & 93–94).

(2) The plaintiff did not provide any expert evidence to substantiate his claim that the structure erected by the defendant was unsafe. At this stage, the court was reluctant to interfere with or assume MBPJ's role and responsibility in determining whether defendant's structure was safe or in deciding whether it should be torn down. Under the Street, Drainage and Building Act 1974 and the Local Government Act 1976, local authorities acted as technical and statutory decision-makers in matters concerning building control. Their decisions should be respected unless they were proven to be unlawful, unreasonable or procedurally improper (see paras 59–60 & 62).

(3) The court had to exercise caution when interpreting or determining the responsibilities or omissions of local authorities, particularly when they had not been included as parties to the proceedings, as in the instant case, as any order made by the court against the local authority in its absence would offend the principles of natural justice and procedural fairness. The relief of demolition sought by the plaintiff requested the court to disregard or deny MBPJ's role and function in enforcing the law in relation to illegally constructed structures (see paras 69–75 & 78–79).

(4) The court therefore exercised its inherent power to prevent injustice and abuse of its process by refusing the prayer for demolition until the MBPJ had evaluated the complaint based on expert assessment and had discharged its powers under the law. Any party dissatisfied with MBPJ's decision could challenge it by way of judicial review. Accordingly, apart from awarding damages for the defendant's admitted trespass and ordering the defendant to repair the awning that his workers had damaged, the rest of the reliefs sought by the plaintiff were premature and were dismissed (see paras 81–83).

[Bahasa Malaysia summary

Plaintif dan defendan merupakan jiran dalam sebuah taman perumahan. Rumah defendan terletak betul-betul di belakang hartanah plaintif dan berada satu aras lebih tinggi. Kedua-dua hartanah tersebut dipisahkan oleh sebuah tembok penahan. Dalam tindakan ini, plaintif antara lain memohon perintah supaya defendan: (a) merobohkan sebuah dinding yang telah dibinanya di atas tembok penahan tersebut; (b) membaiki atau menggantikan sebuah awning pada hartanah plaintif yang didakwa telah rosak akibat perbuatan pekerja defendan; (c) membayar ganti rugi kerana menceroboh ke dalam hartanah plaintif; dan (d) membayar ganti rugi akibat susut nilai pasaran hartanah plaintif serta kos melepas ('opportunity cost') berkaitan penjualan hartanah plaintif. Defendan mengakui bahawa struktur yang didirikannya di atas tembok penahan tersebut tidak mendapat kelulusan pihak berkuasa tempatan ('MBPJ'). Beliau juga mengakui bahawa pekerjanya telah merosakkan awning milik plaintif. Selain memfailkan tindakan ini, plaintif telah membuat aduan

mengenai struktur haram defendan kepada MBPJ dan pihak pengurusan taman perumahan tersebut.

Diputuskan, memerintahkan defendan membayar RM50,000 kepada defendant sebagai ganti rugi am kerana menceroboh hartanah plaintif dan membaiki awning di hartanah plaintif dan mengenepikan tuntutan lain:

(1) Melihat kepada pengakuan defendan, tuntutan plaintif berhubung pencerobohan dibenarkan dan defendan turut diperintahkan untuk membaiki kerosakan pada awning milik plaintif. Tuntutan bagi ganti rugi khas tidak dibenarkan kerana keterangan yang mencukupi mengenainya tidak dikemukakan (lihat perenggan 86–88, 90 & 93–94).

(2) Plaintif tidak mengemukakan apa-apa keterangan pakar bagi menyokong dakwaannya bahawa struktur yang didirikan oleh defendan adalah tidak selamat. Pada peringkat ini, mahkamah enggan untuk campur tangan atau mengambil alih peranan serta tanggungjawab MBPJ dalam menentukan sama ada struktur defendan itu selamat atau sama ada ianya wajar dirobohkan. Di bawah Akta Jalan, Parit dan Bangunan 1974 dan Akta Kerajaan Tempatan 1976, pihak berkuasa tempatan bertindak sebagai pembuat keputusan teknikal dan statutori dalam hal-hal berkaitan kawal selia bangunan. Keputusan mereka hendaklah dihormati melainkan dibuktikan sebagai menyalahi undang-undang, tidak munasabah atau berlaku ketidakaturan dari segi prosedur (lihat perenggan 59–60 & 62).

(3) Mahkamah perlu berhati-hati ketika mentafsir atau menentukan tanggungjawab atau peninggalan pihak berkuasa tempatan, khususnya apabila mereka tidak dinamakan sebagai pihak dalam prosiding seperti dalam kes ini, kerana sebarang perintah yang dibuat terhadap pihak berkuasa tempatan tanpa kehadirannya akan menjejaskan prinsip keadilan asasi dan ketertiban prosedur. Relif merobohkan struktur yang dipohon oleh plaintif pada asasnya memohon kepada mahkamah mengenepikan atau menafikan peranan dan fungsi MBPJ dalam penguatkuasaan undang-undang mengenai struktur binaan tanpa kebenaran (lihat perenggan 69–75 & 78–79).

(4) Oleh itu, mahkamah melaksanakan kuasa sedia adanya bagi mengelakkan ketidakadilan dan penyalahgunaan proses dengan menolak permohonan merobohkan struktur sehingga MBPJ menilai aduan tersebut berdasarkan penilaian pakar dan melaksanakan kuasa-kuasanya di bawah undang-undang. Mana-mana pihak yang tidak berpuas hati dengan keputusan MBPJ boleh mencabarnya melalui semakan kehakiman. Sehubungan itu, selain daripada penganugerahan ganti rugi atas pencerobohan yang diakui oleh defendan dan perintah supaya defendan membaiki awning yang telah rosak akibat pekerjanya, relif lain

yang dipohon oleh plaintif adalah pramatang dan wajar ditolak (lihat perenggan 81–83).]

Cases referred to

Darahman bin Ibrahim & Ors v Majlis Mesyuarat Kerajaan Negeri Perlis & Ors [2008] 4 MLJ 309; [2008] 4 CLJ 538, CA (refd)

Government of Malaysia v Lim Kit Siang; United Engineers (M) Berhad v Lim Kit Siang [1988] 2 MLJ 12; [1988] 1 CLJ Rep 63, SC (refd)

Hong Yik Trading v Liziz Plantation Sdn Bhd [2017] 5 MLJ 398; [2017] 8 CLJ 481, FC (refd)

Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor dengan tanggungan [1999] 3 MLJ 1, FC (folld)

Permodalan MBF Sdn Bhd v Tan Sri Datuk Seri Hamzah bin Abu Samah & Ors [1988] 1 MLJ 178; [1988] 1 CLJ Rep 244, SC (refd)

Saravanan a/l Sangaralingam & Anor v Majlis Bandaraya Ipoh & Anor [2025] 8 MLJ 785; [2025] 2 MLRH 491, HC (refd)

Tama Lamada v Hariwood Sdn Bhd & Anor [2016] MLJU 1927; [2016] CLJU 565, HC (refd)

Terra Damansara Sdn Bhd v Nandex Development Sdn Bhd [2006] 6 MLJ 24, HC (refd)

Legislation referred to

Evidence Act 1950 ss 18(1), 21, 101(1)
Federal Capital Act 1960 s 3
Federal Constitution Ninth Schedule, List II, item 4
Local Government Act 1976 ss 3, 4, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, Part III
Rules of the High Court 1980 (repealed by Rules of Court 2012)
Rules of Court 2012 O 92 r 4
Street, Drainage and Building Act 1974 ss 3, 70, 70(1), (4), (6), (7), (11), (16), 70B, 74, 101, 133

Caryn Shua (Richard Tee & Chin) for the plaintiff.
Adnan Seman @ Abdullah (Adnan Sharida & Assoc) for the defendant.

Hazizah Kassim JC:

INTRODUCTION

[1] This case has been resolved through a full trial scheduled from 24 to 26 February 2025.

[2] On 19 May 2025, I allowed part of the plaintiff's claim against the defendant. Dissatisfied with the ruling, the plaintiff appealed against that part of the decision.

MATERIAL FACTS

[3] The plaintiff and the defendant are neighbours residing in the Tropicana Indah Resort Homes, Petaling Jaya.

[4] The plaintiff is the registered owner of a property known as No 47 Jalan PJU 3/12F, Tropicana Indah Resort Homes, while the defendant possesses a property at No 26 Jalan PJU 3/12E.

[5] The defendant's property is located directly behind the plaintiff's property and is one floor above it.

[6] The plaintiff's claim against the defendant, among others, seeks:

(a) an order requiring the defendant to demolish the wall and/or the illegal structure built on top of the original retaining wall;

(b) in the alternative to (a), an order for the defendant to strengthen the original retaining wall and appoint a certified engineer and/or professional (approved by the plaintiff) to certify the construction of the illegal structure;

(c) an order for the defendant to repair and/or replace the awning at the plaintiff's property;

(d) alternatively to para (c), an order that the defendant bear all costs of repairing the awning incurred by the plaintiff;

(e) an order for the defendant to pay damages for trespass to the plaintiff;

(f) an order for the defendant to pay damages for the diminution in market value and the opportunity cost associated with the sale of the plaintiff's property;

(g) general damages for trespass;

(h) special damages for trespass;

(i) interest at 5%pa for (g) and (h), calculated from the date of the writ summons until the date of full settlement;

(j) costs; and

(k) any other relief this court deems fit and proper to grant.

APPLICABLE LAW

[7] In the case of *Hong Yik Trading v Liziz Plantation Sdn Bhd* [2017] 5 MLJ 398; [2017] 8 CLJ 481, the Federal Court makes findings on the burden of proof as follows:

A [12] It is settled law that the burden of proof rests throughout the trial on the party who asserts that the facts exist (s 101 of the Evidence Act 1950). Where a party on whom the burden of proof lies has discharged that burden, then the evidential burden shifts to the other party. However, if the party on whom the burden of proof lies fails to discharge it, the other party need not call any evidence. This is
B highlighted in the case of *Selvaduray v Chinniah* [1939] 1 MLJ 253; [1939] CLJU 107; [1939] 1 LNS 107 where Terrell, Ag CJ stated:

> ... it is clear that the onus is on the plaintiff to prove his case. After the conclusion of the whole case, there must be some preponderance in his favour. It may be true that the plaintiff established a prima facie case, but at the conclusion of the trial,
C the learned Judge has found that the position was exactly even, ie that any preponderance in the plaintiff's favour had disappeared. That being the case, the plaintiff must necessarily fail, as he has not discharged the onus which is upon him. No doubt the defendant would equally have failed if he had been the claimant and had tried to establish, as a substantive part of his case, the
D alternative version which he tried to prove in answer to that of the plaintiff.

In the case of *International Times & Ors v Leong Ho Yuen* [1980] 2 MLJ 86 at p 87; [1980] CLJU 31; [1980] 1 LNS 31, Salleh Abas FCJ (as he then was) restated the same position in the following words:

E For the purpose of this appeal it is necessary to bear in mind the distinction between the two senses in which the expressions burden of proof and onus of proof are used (*Nanji & Co v Jatashankar Dossa & Ors* AIR 1961 SC 1474, 1478 and *Raghavamma v Chenchamma* AIR 1964 SC 136, 43). The first sense, signified by the expression burden of proof such as referred to in s 101 of the
F Evidence Act is the burden of establishing a case and this rests throughout the trial on the party who asserts the affirmative of the issue. The appellants in the present appeal relied on justification and fair comment. Therefore, the burden of proving these defences rests entirely upon them (*Gatley on Libel and Slander*, 7th Ed paras 351 and 354). The second sense referred to as onus of proof, on the
G other hand, relates to the responsibility of adducing evidence in order to discharge the burden of proof. The onus as opposed to burden is not stable and constantly shifts during the trial from one side to the other according to the scale of evidence and other preponderates. Such shifting is one continuous process in the evaluation of evidence. According to ss 102 and 103 of the Evidence Act, if the party with whom this onus lies whether initially or subsequently as a result of
H its shifting does not give any or further evidence or gives evidence which is not sufficient, such party must fail Similarly, in the case of *Stoney v Eastbourne Rural District Council* [1927] 1 Ch 367, Lord Hanworth MR had articulated on the issue of the burden of proof in the following manner:

I > It appears to me that there can only be sufficient evidence to shift the onus from one side to the other if the evidence is sufficient prima facie to establish the case of the party on whom the onus lies. It is not merely a question of weighing feather on one side or the other, and of saying that if there were two feathers on one side and one on the other, that would be sufficient to shift the onus. What is meant is, that in the first instance, the party on whom the onus

lies must prove his case sufficiently to justify a judgement in his favour if there is no other evidence given.

ISSUES TO BE TRIED

[8] The issues being raised by parties are as follows:

(i) whether the renovation and construction of the wall on top of the existing retaining wall is illegal, lacking approval and/or a permit from the Petaling Jaya Municipal Council ('MBPJ'), and not in accordance with the specifications provided by the MBPJ;

(ii) whether the construction of the wall on top of the existing retaining wall between the plaintiff's property and the defendant's property, constructed by the defendant and/or the defendant's contractor, is strong and safe;

(iii) whether the construction of the wall on top of the existing retaining wall has affected the rights of the plaintiff to lighting and interfered with the plaintiff's natural rights to the plaintiff's property as pleaded through para 7 of the statement of claim;

(iv) whether the defendant and/or the defendant's contractor has trespassed and entered the plaintiff's property while carrying out the renovation and/or construction works;

(v) whether the plaintiff has suffered damages and losses due to the construction of the wall by the defendant and/or the defendant's contractor; and

(vi) whether the plaintiff is entitled to claim for the reliefs included general damages and special damages for trespass, damages for diminution of market value and opportunity cost for selling the plaintiff's property as pleaded at para 16 of the statement of claim.

COURT'S ANALYSIS AND FINDINGS

[9] Having reviewed the pleadings, the evidence presented by the witnesses, and the submissions from the respective counsel for both the plaintiff and defendant, below are my findings.

Issue 1: Whether the renovation and construction of the wall on top of the existing retaining wall is illegal, lacking approval and/or a permit from the Petaling Jaya Municipal Council ('MBPJ'), and not in accordance with the specifications provided by the MBPJ; and

Issue 2: Whether the construction of the wall on top of the existing retaining wall between the plaintiff's property and the defendant's property, constructed by the

defendant and/or the defendant's contractor, is strong and safe

[10] Regarding issue 1, I note that in the defendant's testimony, he admitted that he constructed the illegal structure without permits as follows:

> S: ... apakah maksud kamu, maksud kamu adalah struktur ini dibina tidak by law? Betul atau tidak.
>
> J: Ya, betul.
>
> S: ... ada sebarang kebenaran membina struktur ini dari MBPJ.
>
> J: Tidak.
>
> S: Setuju ke kalau tidak ada kebenaran dari MBPJ struktur ini merupakan satu struktur yang tidak sah di sisi undang-undang.
>
> J: Ya setuju.

[11] Based on the defendant's evidence on the issue of illegality of the structure, I agreed with the plaintiff that the evidence constitutes an admission pursuant to s 18(1) of the Evidence Act. Section 18(1) of the Evidence Act provides as follows:

> (1) Statements made by a party to the proceeding or by an agent to any such party whom the court regards under the circumstances of the case as expressly or impliedly authorized by him to make them are admissions.

[12] It is important to note that the plaintiff's counsel used the words of the bylaws while cross-examining the defendant. Therefore, there is no doubt that the plaintiff is aware of the rules and responsibilities of the local council concerning an illegal structure.

[13] The statute grants the local council the authority and responsibility to monitor and address issues concerning illegal structures and to rectify them.

[14] For submission purposes, the defendants' counsel argues the issue of whether the plaintiff is entitled to demand the demolition of the disputed structure without following the procedures specified by the Street, Drainage and Building Act 1974, which amounts to an abuse of court process and a collateral challenge.

[15] However, the learned counsel for the plaintiff does not agree with this proposition because this issue was not listed in the statement of issues to be tried, and the defendant is estopped from raising new issues at the stage of written submissions to divert the attention of this court. In support of his position, plaintiff's counsel relies on the case *Tama Lamada v Hariwood Sdn Bhd & Anor* [2016] MLJU 1927; [2016] CLJU 565 that:

[14] There was yet another reason why the first defendant was precluded from requiring either the plaintiff or the second defendant to adduce evidence of the creation of NCR in the land in question. The question of whether the Pulau Engkabang is NCR land was simply not a live issue between the parties. A reading of the common agreed issues to be tried ie Bundle E would reveal that this issue was not included. In my judgment, the non-inclusion of this issue in Bundle E meant that the parties never intended it to be an issue for determination at the trial. I would interpolate that the reason for not including this as an issue to be tried is obvious — the parties very well knew that it is a fact deemed admitted by the pleadings. It will be recalled that pre-trial case management ('PTCM'), the parties were directed, amongst others, to formulate and settle the issues requiring determination at the trial. These directions were issued pursuant to the provisions of O 34 r 2 of the Rules of Court 2012. To my mind, the parties were bound by the agreement that they had reached at PTCM on any fact or issue that they had settled or formulated. The whole meaning of the regime of PTCM under O 34 r 2 is to narrow the parties to definite issues, and thereby diminish expense and delay especially as regards the amount of testimony required on either side at the hearing. The issues to be tried that were agreed and settled between the parties before trial are analogous to the pleadings, if not an integral part. As they are matters that have been agreed by the parties, in my judgment, it would be against all tenets of fair play to allow any party to resile or renege from what had been agreed. In my opinion the pronouncement of the Federal Court in *Anjalai Ammal v Abdul Kareem* [1969] 1 MLJ 22; [1968] CLJU 8; [1968] 1 LNS 8 (FC) that a judge should not depart from the strict rules of procedure in deciding the case on an issue not raised in the pleadings applies with equal force to the agreed issues to be tried. A judgment decided on issues that are not raised in the pleadings is bound to be set aside: see also *The Chartered Bank v Yong Chan* [1974] 1 MLJ 157; [1974] CLJU 178; [1974] 1 LNS 178.

[16] I refer to para 6 of the statement of claim, which states that:

6. Plaintif sesungguhnya percaya dan memplidkan bahawa Kerja-kerja Pengubahsuaian tersebut dan pembinaan dinding atas tembok penahan asal (selepas ini dikenali sebagai struktur haram (illegal structure) adalah tanpa kebenaran dan/atau permit daripada pihak berkuasa, iaitu Majlis Bandaraya Petaling Jaya (selepas ini dikenali sebagai MBPJ) serta tidak mengikut spesifikasi yang ditetapkan oleh MBPJ. Tiada sebuah papan rasmi yang dikeluarkan oleh MBPJ bagi tujuan Kerja-kerja Pengubahsuaian tersebut dijalankan atas Tanah Defendan.

[17] To contest para 6 above, the defendant pleaded as follows:

6. Defendan menafikan kandungan perenggan 6 Pernyataan Tuntutan dan memplidkan bahawa kerja-kerja mengubahsuai adalah mengikut pelan kerja yang disediakan oleh pakar arkitek En. Maroz bin Haji Azizul dari Tetuan LWS Architects Sdn Bhd (selepas ini dirujuk sebagai Arkitek tersebut). Arkitek tersebut telah memaklumkan kerja-kerja mengubahsuai kepada pihak MBPJ pada 25.8.2023 di bawah borang rujukan No. MBPJ-MPK(U/KP)-08.B09.

[18] Having considered the above and compared the facts in the case of *Tama Lamada v Hariwood Sdn Bhd & Anor* with the facts of this case before me, I find that although the issue raised by the defendant is not listed in the list of issues to be tried, the wording in issue 1, which is — without approval and/or permit from Petaling Jaya Municipal Council ('MBPJ') and not in accordance with the specification given by the MBPJ, cannot, in my opinion, prevent this court from referring to the relevant statute enacted by Parliament that grants power to MBPJ as the local authority.

[19] The reasons for my findings are as follows:

(a) the facts regarding the lack of approval and/or permit from Petaling Jaya Municipal Council ('MBPJ') and not in accordance with the specification given by the MBPJ have been pleaded by the plaintiff and denied by the defendant;

(b) the defendant has raised an issue regarding whether the plaintiff is entitled to demand the demolition of the structure without following the procedures outlined by the Street Drainage and Building Act 1974 ('the SDBA 1974'). The question is whether such a failure constitutes an abuse of court process or a collateral challenge. The argument put forth by the defendant's counsel relates to a question of law; and

(c) the plaintiff opted not to call an officer from MBPJ, even though the subpoena had been filed with this court. The issuance of the subpoena at the outset indicates that this court should consider the duties and functions of MBPJ as a local authority in relation to the renovation carried out without a permit from MBPJ.

[20] I noticed that in the reply submission, the plaintiff declined to address this issue because it was not part of the list of issues to be tried. It is also pertinent for this court to highlight the plaintiff's admission that he cannot confirm whether the wall he claimed was illegal was erected on the retention wall.

[21] The plaintiff stated that he has not had a land surveyor check the entire area. During cross-examination, the plaintiff also agreed that he cannot confirm and has no knowledge of any structure currently on his property, which was allegedly erected illegally by the defendant.

[22] The concerns of the plaintiff and other residents regarding the safety risks associated with the renovations of the defendants' house No 26 have been conveyed to MBPJ via email.

[23] Now, the pertinent question is whether this court possesses the authority to consider an issue not specified in the issues to be tried.

[24] Having read the statement of claim and the statement of defence, and in light of the relief claimed in para (a) of the statement of claim and the evidence presented by the plaintiff during cross-examination, I find that this court must consider whether the plaintiff is entitled to demand the demolition of the structure without adhering to the procedures set out by Act 133. This raises the question of whether such failure constitutes an abuse of the court process or a collateral challenge.

[25] I also consider that the defendant has raised the issue of the allegedly illegal structure, which has been explained to MBPJ, as can be found in para 11 of the statement of claim.

[26] In the case of *Darahman bin Ibrahim & Ors v Majlis Mesyuarat Kerajaan Negeri Perlis & Ors* [2008] 4 MLJ 309; [2008] 4 CLJ 538, the Court of Appeal held that:

> [15] Secondly, Felcra did not plead the so-called wrong assumption in its statement of defence. Since it is not pleaded, Felcra must be precluded from raising it as a defence. The importance of pleadings can be found in many authorities. In *Muniandy & Anor v Muhd Abdul Kader Muhd Saheed & Ors* [1989] 2 MLJ 416; [1989] 2 CLJ 577; [1989] 1 CLJ Rep 116 (SC), then Supreme Court, accepted with approval what was said by Lord Diplock in *Hadmor Production v Hamilton* [1983] 1 AC 191 at p 233:
>
> > *Under our adversary system of procedure, for a judge to disregard the rule by which counsels are bound, has the effect of depriving the parties to the action of the benefit of one of the most fundamental rules of natural justice, the right of each to be informed of any point adverse to him that is going to be relied upon by the judge, and to be given the opportunity of stating what his answer to its is ...*

[27] Furthermore, the Court of Appeal stated that:

> In *Yew Wan Leong v Lai Kok Chye* [1990] 2 MLJ 152; [1990] 1 CLJ 1113; [1990] 1 CLJ Rep 330 the Supreme Court agreed with what was said by Sharma J (as he then was) in *Janagi v Ong Boon Kiat* [1971] 2 MLJ 196; [1971] CLJU 42; [1971] 1 LNS 42, in which Sharma J had *made observation on the function of pleadings and the duty of the court to follow it*:
>
> > The court is not entitled to decide a suit on a matter which no issue has been raised by the parties. It is not the duty of the court to make out a case for one of the parties when the party concerned does not raise or wish to raise the point. In disposing of a suit or matter involving a disputed question of fact, it is not proper for the court to displace the case made by a party in its pleadings and give effect to an entirely new case which the party had not made out in its own pleadings.

The trial of the suit should be confined to the pleads on which the parties are at variance.

[28] The Street, Drainage and Building Act 1974 ('the SDBA 1974') constitutes a significant statute that enhances the regulatory and supervisory capacities of local governments in Malaysia concerning building and construction activities. It establishes legal frameworks designed to prevent and control unauthorised developments, including illegal renovations, extensions, or modifications executed without the requisite approval or permit from the local authority.

[29] The definition of local authority in Act 133 refers to any City Council, Municipal Council, or District Council, as applicable. In relation to the Federal Territory, it pertains to the Commissioner of the City of Kuala Lumpur appointed under s 3 of the Federal Capital Act 1960.

[30] I also refer to the definition of building, building plans, nuisance, local authority and structure elements pursuant to s 3 of Act 133, which supports the facts of the alleged illegal structure as pleaded by the plaintiff. The relevant definitions are as follows:

> 'building' includes any house, hut, shed or roofed enclosure, whether used for the purpose of a human habitation or otherwise, and also any wall, fence, platform, staging, gate, post, pillar, paling, frame, hoarding, slip, dock, wharf, pier, jetty, landing-stage or bridge, or any structure support or foundation connected to the foregoing.
>
> 'building plans' means plans that include site plans, key plans, floor plans, sections and elevations as set out specifically in any by-laws made under this Act.
>
> 'nuisance' means any act, omission or thing occasioning or likely to occasion injury, annoyance, offence, harm, danger or damage to the sense of sight, smell or hearing, or which is or is likely to be injurious or dangerous to health or property.
>
> 'local authority' means any city council, municipal council, town council, town board, local council, rural board or similar local authority established by written law and in relation to the Federal Territory means the Commissioner of the City of Kuala Lumpur appointed under section 3 of the Federal Capital Act 1960 [Act 190].
>
> 'structure elements' means those parts or elements of a building which resist forces and moments and includes foundations, beams, columns, shear cores, slabs, roof trusses, staircases, load bearing walls and all other elements designed to resist forces and moments but excludes doors, windows and non-load bearing walls.

[31] Therefore, MBPJ is clearly a local authority within the scope of Act 133. Consequently, I conclude that the legal issue presented by the defendant is meritorious and deserves consideration by this court.

Legal perspective on illegal renovation and judicial intervention

[32] Section 70(1) of Act 133 strictly prohibits the erection or alteration of any building without first obtaining the written permission of the local authority. The Act empowers local government authorities to issue stop-work orders, demolish illegal structures, and initiate prosecutions or civil actions against offenders.

[33] Based on the above provisions, the local authority possesses the statutory power to inspect works, issue stop-work orders, demand the demolition of unauthorised structures, and prosecute offenders. It serves as the gatekeeper of all building-related approvals and enforcement. The local authority, including MBPJ, is authorised to act in the public interest, particularly concerning safety compliance and urban control within its administrative functions and subject to legal limits.

[34] Under s 70 of Act 133, no person is allowed to erect any building without the approval of the local authority. The relevant provision of s 70 is stated below:

> (1) No person shall erect any building without the prior written permission of the local authority.
>
> (2) Any person who intends to erect any building shall cause to be submitted by a principal submitting person or submitting person —
>
> (a) to the local authority such plans and specifications as may be required by any by-law made under this Act;
>
> (b) to the relevant statutory authority such plans and specifications as may be required by any other written law;
>
> ...
>
> (3) No plans for the erection of a building shall be approved —
>
> (a) if the building is to be erected on any holding abutting on or having access to any new street or proposed new street, until plans for such new street have been approved by the local authority under the provisions of this Act;
>
> (b) before any deposit, required to be made under the provisions of section 18 has been made or unless such building or class of buildings have been exempted from the provisions of subsection 17(1) by the State Authority; and
>
> (c) before any other conditions which the local authority may deem necessary to impose have been complied with.

[35] This provision grants the local authority exclusive discretion to approve or refuse building or renovation plans and to impose conditions or request amendments prior to approval.

[36] Furthermore, the local authority possesses the authority under sub-s 70(4) of Act 133 to issue directives concerning the following particulars:

(a) compliance with this or any other Act, as well as any by-laws, orders, rules, or regulations made thereunder;

(b) the site of any building and the space to be left around any building to ensure the free admission of light and circulation of air, and to facilitate scavenging;

(c) the levels at which the foundation and lowest floor are to be laid;

(d) the raising of the level of the site to form a stable and healthy foundation and the materials to be used in raising the same;

(e) the line of frontage with neighbouring buildings, if the building abuts on or is within fifty feet of a public street;

(f) the front elevation and where the side elevation abuts on or is within fifty feet of a public street the side elevation;

(g) the setting forward or back of building to the regular line of street as defined in section 23;

(h) the class, design and appearance of the building is to be erected in a district, locality or street in which only buildings of a certain class, design or appearance may be erected;

(i) the provision of a sufficient and pure water supply within a reasonable distance of the building;

(j) the setting back of buildings to any building line;

(k) the provision and construction of an arcade or paved footway for use of foot passengers along any portion of the building lot which abuts on a street.

(l) The principal submitting person or submitting person to whom any written directions are given shall amend the plans and specifications accordingly and re-submit the amended plans and specifications within such period as the local authority may specify.

[37] In sub-s 70(6), it is stated that if amended plans are not resubmitted within the specified period, or any extended period, they shall not be reconsidered and shall be deemed to have been withdrawn. However, the applicant may submit new plans and specifications.

[38] Meanwhile sub-s 70(7) of Act 133 provides that — where a building is

directed to be set forward to a regular line of street, it shall be a sufficient compliance with such direction if a wall or fence of such materials and dimensions as may be approved by the local authority is erected at a distance from the line sufficient to provide any arcade or footway which may be required under this Act.

[39] The Act 133 also establishes a mechanism for the local authority to take action if anyone begins the construction of a building without approval, as outlined in sub-s 70(11) as follows:

> (11) Any person who makes any alteration to any building otherwise than is provided for in this Act or by-laws made thereunder or without the prior written permission of the local authority shall be liable on conviction to a fine not exceeding twenty-five thousand ringgit and a Magistrate's Court shall, on the application of the local authority, issue a mandatory order to alter the building in any way or to demolish it.

[40] Subsection 70(16) of Act 133 defines what constitutes the erection of a building, which includes the following:

> (16) For the purposes of this section and of section 75 a person shall be deemed to erect a building who —
>
> (a) begins work on the site thereof for or in respect of a new building;
>
> (b) adds to or alters any existing building in such a manner as to involve —
>
> (i) new foundations; or
>
> (ii) new or partly new or increased superstructure or roof on existing walls or existing foundations;
>
> ...
>
> (j) constructs an additional storey or storeys, or renews, reconstructs or erects an outer or party wall of the first, second or third storey counting from the ground, to the extent of one storey in height:

[41] Additionally, the local authority, including MBPJ, has been granted the power by Act 133 to modify or waive any by-laws, as outlined in s 74 as follows:

> 74 Modification or waiver of by-laws
>
> (1) The local authority may on receipt of an application in relation to any particular building or structure, and provided it is satisfied that such waiver or modification as hereinafter mentioned will not render the building or structure unsafe, modify or waive, upon and subject to such terms and conditions as it thinks fit, any of the requirements of any by-laws relating to the construction of buildings.
>
> (2) Any such application shall be made in writing to the local authority by or on behalf of the owner of the particular building or structure or of the particular part of such building or structure to which such application

relates and shall state the nature and extent of and reasons for the proposed modification or waiver of such requirement and shall be accompanied by such plans, sections, elevations and particulars as may be required.

[42] Section 133 of Act 133 provides for by-laws as follows:

133 By-laws

The State Authority shall have the power to make by-laws for or in respect of every purpose which is deemed by him necessary for carrying out the provisions of this Act, and for prescribing any matter which is authorised or required under this Act to be prescribed, and in particular and without prejudice to the generality of the foregoing for in respect of all or any of the matters specified hereunder —

...

(xi) the closing, fencing, lighting and repair of any works, hole or place likely to be a danger to the public;

(xii) the construction, alteration and demolition of buildings and the methods and materials to be used in connection therewith;

(xiia) the submission of plans, specification, calculations, particulars, documents and reports relating to erection of building, principal submitting persons and submitting persons and their duties and responsibilities, and the form and the nature or qualification of such plans, calculations, particulars, documents and reports;

(xiib) the manner and procedure for making an application for the approval for plans and specification for the erection of building;

(xiic) the planning, design and erection of building including —

(a) the structural strength of the building;

(b) the stability of the building;

(c) precautions against overloading;

(d) measures to safeguard the adjacent buildings; and

(e) underpinning;

(xiid) the provision of embankments and retaining walls;

(xxii) to require the owner or occupier of premises, or any other person having a duty under this Act or any by-law made, thereunder, to execute any work or perform any act necessary in the opinion of the local authority to secure compliance with such Act or by-laws and in default of compliance with such requirement on the part of such owner or occupier or other person, to authorise the local authority to execute such work or perform such act itself and to recover the expenses and costs incurred by it in or about the execution of such work or the performance of any such act, from such owner, occupier or other person, as the case may be;

[43] In light of the related provisions mentioned above, the local authority is deemed to possess significant discretion and responsibilities under s 70 of the

Act 133. This section grants the local authority extensive regulatory and enforcement powers concerning the control, approval, and enforcement of building works, including renovations.

[44] Furthermore, compensation damages and costs are dealt with under Act 133, specifically in s 101:

> 101 Compensation damages and costs to be determined by court
>
> (1) Except as herein otherwise provided in all cases when compensation, damages, fees, costs or expenses are by this Act directed to be paid by the local authority to any person or by any person to any other person the amount and, if necessary, the apportionment of the same and any question or liability shall, in case of dispute or failure to pay, be summarily ascertained and determined by a Magistrate's Court.
>
> (2) If the amount of compensation, damages, fees, costs or expenses is not paid by the party liable to pay the same within seven days after demand, such default may be reported to a Magistrate's Court and such amount recovered in the same way as if it were a fine imposed by a Magistrate's Court.
>
> (3) An appeal shall lie to the High Court from any decision of a Magistrate's Court under this section, and the provisions of the Criminal Procedure Code shall mutatis mutandis apply to all such appeals.

[45] Having considered the nature and purpose of Act 133, I believe this court should evaluate the plaintiff's claim in a manner that aligns with the intent of Act 133.

[46] The preamble of Act 133 in its original wording is as follows:

> An Act to amend and consolidate the laws relating to street, drainage and building in local authority areas in Peninsular Malaysia, and for purposes connected therewith.
>
> WHEREAS it is desired to introduce in the form of an Act of Parliament a uniform system with respect to street, drainage and building in local authority areas in Peninsular Malaysia;
>
> AND WHEREAS it is now expedient for the purpose only of ensuring uniformity of law and policy to make a law with regard to local government matters relating to street, drainage and building;

Roles and functions of local Government in Malaysia

[47] The local government, commonly referred to as the *Pihak Berkuasa Tempatan* (PBT), plays a vital role in the governance and administration of local jurisdictions within Malaysia. The legal framework regulating local governments is primarily outlined in the Federal Constitution, the Local

Government Act of 1976 (Act 171), and relevant state legislation.

Legal foundation and structure

[48] Under item 4 of the Ninth Schedule (List II — State List) of the Federal Constitution, local government is under state jurisdiction.

[49] However, the federal government influences local governance through the Ministry of Local Government Development (KPKT) and uniform legislation, such as the Local Government Act 1976 (Act 171), which establishes a common structure across all states, with the exception of Sabah and Sarawak, which have their own ordinances.

[50] Local governments are generally divided into City Councils (Majlis Bandaraya), Municipal Councils (Majlis Perbandaran), and District Councils (Majlis Daerah) based on population size and economic development. The classification of local governments in Malaysia into City Councils, Municipal Councils, or District Councils is administratively determined by the State Authority under Act 171, specifically in ss 3 and 4.

[51] Section 3 of Act 171 states:

> The State Authority may, by order published in the Gazette, declare any area in the State to be a local authority area ...

[52] Section 4 of Act 171 provides for classification:

> A local authority shall be a City Council, a Municipal Council or a District Council as the State Authority may in each case determine ...

[53] Therefore, it is clear that the statute grants discretion to the State Authority for classifying a local authority according to appropriate criteria.

[54] To address the issue raised by the defendant, it is essential to examine the key roles and responsibilities of local governments, including MBPJ.

Core roles and responsibilities

[55] Local governments represent the third tier of governance, subordinate to both federal and state levels. The main functions of local governments are outlined in the Local Government Act 1976, specifically in Part III: Functions of Local Authorities, which spans ss 72 to 84 and includes the following:

(a) public health and sanitation:

(i) waste collection and disposal;

(ii) sewerage management;

(iii) control of infectious diseases;

(iv) licensing of food premises; and

(v) vector control (eg dengue prevention).

(b) urban planning and development control:

(i) granting planning permissions;

(ii) land use zoning; and

(iii) building plan approvals.

(c) maintenance of public infrastructure:

(i) roads and drainage;

(ii) street lighting; and

(iii) public facilities and housing management.

(d) licensing and business regulation:

(i) issuance of business licenses;

(ii) enforcement of by-laws; and

(iii) regulation of entertainment and trade premises.

(e) environmental protection:

(i) management of green areas;

(ii) tree planting and landscaping; and

(iii) pollution control.

(f) law enforcement and by-law implementation:

(i) enforcing local by-laws;

(ii) issuing compound notices; and

(iii) municipal policing.

(g) governance and accountability.
Each local authority is governed by a Mayor (Datuk Bandar) or President (Yang Dipertua) and a set of councillors (Ahli Majlis), appointed by the respective State Authority. They are responsible for:

(i) passing budgets and local policies;

(ii) overseeing municipal operations; and

(iii) engaging with the community and addressing grievances.

Relationship with the Local Government's roles and functions

[56] The authority of the local government to approve, oversee, and impose penalties for building-related activities is firmly established within its statutory mandate, as outlined in both Act 133 and Act 171. Engaging in illegal renovations without the requisite permit directly violates the statutory responsibilities of the local authority, potentially contravening regulations related to building safety, urban planning policies, or the rights associated with adjacent properties.

[57] The defendant refers to the case of *Saravanan a/l Sangaralingam & Anor v Majlis Bandaraya Ipoh & Anor* [2025] 8 MLJ 785; [2025] 2 MLRH 491, where the court emphasised the guidelines and procedures in addressing the issue of the allegedly illegal erection of a structure and ruled as follows:

> [30] Local authorities as statutory bodies are vested with powers to ensure compliance with urban planning standards in the public interest. The purpose of such standards is to prevent potential hazards and maintain consistency across developments within a given area. The respondents, in this case, is obligated under ss 70 and 72 of the SDBA 1974 to take corrective action when a structure fails to comply with height regulations and poses potential risks to the community.

[58] I further refer to para 34 of the judgment in *Saravanan Sangaralingam & Anor v Majlis Bandaraya Ipoh & Anor* as follows:

> [34] Section 72(1) of the SDBA 1974 further empowers the local authority to require corrective actions for non-compliant structures. Importantly, it provides the respondent discretion in deciding whether to demand demolition or permit adjustments or alterations to align with approved plans, provided public safety and regulatory standards are upheld.

[59] The authority to mandate demolition or implement modifications is not only vested in MBPJ as the local authority; it is also important to highlight that the plaintiff did not provide any expert report to substantiate his claim that the structure is unsafe.

[60] At this stage, this court is reluctant to assume the role and responsibilities of the MBPJ through its order. Under Act 133, local authorities such as MBPJ operate within a broad discretionary framework, which enables them to interpret and enforce compliance measures that ensure safety and public welfare, including the authority to initiate enforcement actions.

[61] Referring to the relevant statutes, I believe the next pertinent question is whether this court should intervene to grant relief (a) sought by the plaintiff when the local government is not a party to this suit?

[62] Upon reviewing Act 133 and Act 171, it is important to recognise that local authorities act as technical and statutory decision-makers in matters concerning building control. Their decisions should be respected unless proven to be unlawful, unreasonable, or procedurally improper.

[63] In *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor dengan tanggungan* [1999] 3 MLJ 1, the Federal Court upheld the principle that local authorities have wide powers under Act 133, particularly where public safety is involved.

[64] The plaintiff in this case refers to a letter dated 24 August 2023, addressed to MBPJ, which was signed by the plaintiff and five other owners at Troicana Indah. The letter is titled *Perkara: Tindakan Segera diperlukan: Mengendalikan Pengubahsuaian Tidak Sah di No. 26 Jalan PJU3/12E dan Menjamin Keselamatan Komuniti*. The relevant paras are as follows:

> Dengan melihat kepada perkara-perkara yang mendesak ini kami dengan rendah diri memohon agar MBPJ mengambil langkah-langkah berikut:
>
> Mempercepatkan proses pembongkaran kerja pembinaan yang bahaya dan tidak sah di Unit No. 26 Jalan PJU3/12E.
>
> Memulakan pemantauan berterusan di tapak tersebut untuk mencegah sebarang aktiviti tidak sah seterusnya dan memastikan pematuhan terhadap arahan-arahan MBPJ.

[65] To support his case, the plaintiff subpoenaed SP3 — Nancy Khong, the property manager of Tropicana Indah. I refer to letters issued by SP3 to MBPJ on p 189 dated 6 September 2023, 27 September 20203 (p 192) and 4 October 2023 (p 195) of the common bundle.

[66] In SP3's letter to MBPJ dated 6 September 2023, it indicates that a notice was issued by MBPJ on 21 July 2023. I refer to SP3's letter dated 4 October 2023 on p 195 of the common bundle, which was issued approximately one month prior to the issuance of the writ summons and statement of claim filed by the plaintiff against the defendant. The letter dated 4 October 2023, signed by SP3 and issued to MBPJ, is shown below:

195

TROPICANA INDAH

Rujukan Kami : T/GB/MBPJ/NK/W4007-23
Tarikh : 04 Oktober 2023

Pengarah
Jabatan Kawalan Bangunan
Tingkat 2, Bangunan Annex MBPJ,
Jln Yong Shook Lin,
46675 Petaling Jaya,
Selangor.
[UP: En. Ismatthiroon bin Hj. Abd Rahman]

Tuan/Puan

TROPICANA INDAH SDN BHD
PER: PELANGGARAN NOTIS MEROBOH DAN PERMIT KERJA KECIL TANPA PELAN DI PREMIS NO 28, JALAN PJU3/12E, PETALING JAYA- MAKLUMAT TENTANG KERETAKAN STRUKTUR DI PREMIS BERSEBELAH

Dengan segala hormatnya merujuk kepada perkara di atas.

Surat kepada surat kami bertarikh 06.09.2023 dan 27.09.2023 mengenai pelanggaran notis meroboh dan penyalahgunaan permit kerja kecil tanpa pelan di premis No. 28, Jalan PJU 3/12E, Petaling Jaya, kami ingin memaklumkan maklumat tambahan yang berkaitan dengan kes ini.

Aktiviti berpoda kerja-kerja yang telah dijalankan tanpa kelulusan yang sewajarnya, kami ingin memaklumkan bahawa premis bersebelahan, iaitu No. 28, Jalan PJU 3/12E, telah mengalami kerosakan pada struktur dinding yang ini berlaku akibat daripada kerja pengubahsuaian yang telah dilakukan di premis No. 30. Kami melihat perkara ini sebagai satu isu serius yang perlu ditangani secepat mungkin.

Pihak kami sangat berharap dengan kesan yang mungkin berlaku kepada premis bersebelahan dan penduduk sekitar. Kami memohon supaya tindakan undang-undang yang sewajarnya perlu diambil terhadap pemilik premis yang melanggar undang-undang tersebut.

Pihak kami memohon agar Jabatan Kawalan Bangunan dapat mengambil tindakan yang sesuai berdasarkan peraturan dan undang-undang yang sedia ada untuk menangani pelanggaran ini dengan segera. Kami juga berharap bahawa langkah-langkah pemulihan yang diperlukan akan diambil untuk memastikan keselamatan penduduk di kawasan tersebut.

Pihak tuanlpuan juga boleh menghubungi Cik Huda di talian 03-78409888 ext 847 bagi sebarang kemusykilan berhubung perkara diatas.

Sekian, terima kasih atas kerjasama dan perhatian pihak tuan.

Untuk dan bagi pihak,
TROPICANA INDAH SDN BHD

NANCY KHONG
Pengurus Hartanah

S/N dmcjue:obVkKpdR6Sdvb2g
*Note - Serial number will be used to verify the originality of this document via eFILING portal

A member of TROPICANA

G **[67]** The plaintiff provides no evidence concerning the status of this complaint. Furthermore, I find that based on the evidence presented by the defendant, the notice issued by MBPJ pertains to the wall erected by the defendant next to unit No 28, which is located adjacent to the defendant's house and not to the wall built at the rear of the defendant's house.

H

[68] It was also undisputed that the plaintiff submitted a complaint to MBPJ. The defendant further asserted that there had been discussions among the parties and the management of Tropicana with MBPJ regarding whether the defendant had received approval for the renovation. However, the plaintiff did not contest the decision made by MBPJ, nor did he name MBPJ as a party to this suit. I agree with the submission of the defendant's counsel that this proceeding constitutes a collateral challenge against the defendant, given that the MBPJ has yet to decide on the complaint lodged by the plaintiff.

I

[69] From a legal perspective, this court must exercise caution when interpreting or determining the responsibilities or omissions of local authorities, particularly in cases where such authorities are not included as parties in the proceedings.

[70] The principle of audi alteram partem (no one should be condemned unheard) necessitates that if the court reaches a conclusion affecting a local government's statutory duty or discretion, the local government must be afforded the opportunity to present its case.

[71] According to the doctrine of necessary parties established under the Rules of Court 2012, an individual whose legal interests are likely to be affected by the resolution of the case should be included as a party to the suit. Courts should generally refrain from adjudicating the legality of an action (eg the approval or non-approval of renovation) or the failures in enforcement without the relevant local authority present.

[72] It is evident that unauthorised renovations carried out without the necessary permit fall under the regulatory powers and enforcement responsibilities of the local government, specifically MBPJ in this instance, as outlined in Act 133 and Act 171. Section 70B of Act 133 provides as follows:

> 70B Order to review safety and stability in the course of erection of building
>
> (2) Where the local authority reasonably suspects there is a defect, deformation or deterioration in the structure of a building under erection which may likely result in the failure of the building, the local authority may issue to the owner of the building an order to review the safety and stability of —
>
> (a) the building;
>
> (b) the foundation of the building; and
>
> (c) the surroundings on which the erection of building is in progress.
>
> ...
>
> (13) Where —
>
> (a) the cessation of the erection of building —
>
> (i) has been ordered under subsection (6), paragraph (7)(a) or subsection (9), as the case may be; or
>
> (ii) has been secured under subsection (10);
>
> (b) the directions given under subsection (8) have been complied with; or
>
> (c) any remedial work has been executed or measure has been taken under

A subsection (11),

the local authority may allow the resumption of the erection of building subject to compliance with such directions and conditions as it may specify.

B **[73]** Having considered the facts of this case and the relevant laws, I believe that in instances where legal proceedings involve factual or legal questions concerning the powers or actions of a local authority — such as determining whether approval was granted or whether enforcement was conducted appropriately — the discretionary power to permit any amendment to the plan
C falls within the scope of the local government's authority.

[74] Therefore, it is essential for the local government to be included as a party in the litigation.

D

[75] Furthermore, I believe that this court should refrain from interpreting, critiquing, or suggesting legal obligations or shortcomings related to the local government in its absence, as such actions could contravene the principles of procedural fairness and natural justice.

E

[76] In reaching this conclusion, I am guided by the principle established in the landmark case of *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor Dengan Tanggungan,* where the
F Federal Court acknowledged that the actions of local authorities are subject to judicial review but should be adequately contested with the named local authority as the respondent. The Federal Court also decided as follows:

> It is axiomatic that local authorities are creatures of statute and their qualities and powers can only be derived by reference to what is express or implicit in the statutes
G under which they function (see, eg Lord Wilberforce in *Bromley LBC v GLC* [1983] 1 AC 768, 813). We also recognise that the statutory scheme of the Local Government Act confers upon Local Authorities a distinct political function, to which the courts, by application of ordinary principles of statutory construction should give effect.

H

[77] In *Government of Malaysia v Lim Kit Siang; United Engineers (M) Berhad v Lim Kit Siang* [1988] 2 MLJ 12; [1988] 1 CLJ Rep 63, the Federal Court cautioned against making judicial pronouncements that negatively affect a non-party.

I

[78] I contend that the relief sought by the plaintiff in para 16(a) of the statement of claim, although indirectly, amounts to a request for the court to disregard or deny the role and function of the local authority in enforcing laws related to construction carried out without the necessary permit.

[79] In my considered view, the relief sought by the plaintiff in para 16(a) seems to undermine the lawful authority granted to the local government under existing and enforceable statutory provisions.

[80] To prevent injustice, this court exercises its inherent powers under O 92 r 4 of the Rules of Court and refers to the case of *Permodalan MBF Sdn Bhd v Tan Sri Datuk Seri Hamzah bin Abu Samah & Ors* [1988] 1 MLJ 178; [1988] 1 CLJ Rep 244, where the Supreme Court decided on the inherent jurisdiction of the court as follows:

> Has the court any jurisdiction to exercise its inherent powers in the instant case? Order 92 rule 4 of the RHC provides:
>
> > 4. For the removal of doubts it is hereby declared that nothing in these rules shall be deemed to limit or affect the inherent powers of the court to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the court.
> >
> > We read this to mean that the rules cannot interfere with the exercise of the inherent powers by the court so long as it deems it necessary to prevent any injustice or any abuse of its own process. It follows that where the rules contain provisions making available sufficient remedies, the court will not invoke its inherent powers.

[81] This court exercises its inherent power to prevent injustice and abuse of the court's process by disallowing the demolition of the building renovated by the defendant until the MBPJ evaluates the complaint based on an expert's assessment and discharges its powers conferred under the law.

[82] This court refrains from interfering with the discretionary power conferred by Parliament to local government. Any parties dissatisfied with the local government's decision may challenge it through judicial review.

[83] Based on the findings above, I conclude that sub-paras (i), (ii), (iii) and (v) of issued to be tried, including the claim for general damages due to the diminution of market value, are premature and should be addressed once the local authorities exercise their powers under the law.

Issue 3: Whether the defendant and/or the defendant's contractor has trespassed and entered the plaintiff's property when carrying out the renovation and/or the construction works

[84] The plaintiff seeks relief for special damages due to trespass.

[85] The plaintiff alleged that the defendant and/or his contractor trespassed onto the plaintiff's property by climbing over the fence originally built on the retaining wall to install scaffolding for their workers and construction materials without the plaintiff's permission.

[86] The defendant did not deny this allegation; instead, he provided testimony during cross-examination as follows:

> S: Bilakah scaffolding tanggalkan?
>
> SD1: On the spot masa dia complaint hari yang sama. Hari yang sama, bila dia complaint dengan Tropicana, on the spot saya clear and saya tak masuk lagi dalam tu. Cuma saya ada tempat yang 1 kaki itu, daripada 1 kaki itu saya buat.
>
> ...
>
> S: ms 227, ya. Siapakah orang ini?
>
> SD1: Pekerja saya.
>
> S: Pekerja kamu. Setuju ke pekerja kamu itu berdiri di atas awning plaintif.
>
> SD1: Setuju.
>
> S: Setuju. Muka surat 228. Setuju ke scaffolding itu didirikan di atas awning plaintif dalma kawasan rumah plaintif.
>
> SD1: Setuju.
>
> S: Adakah pernah kamu beritahu plaintif 'bolehkah pekerja saya masuk untuk buat kerja?'
>
> SD1: Tidak. Ini ...

[87] The defendant is bound by his admission as provided under s 21 of the Evidence Act 1950. Section 21 of the Evidence Act 1950 states that:

> Admissions are relevant and may be proved as against the person who makes them or his representative in interest: but they cannot be proved by or on behalf of the person who makes them or by his representative in interest except in the following cases ...

[88] Parties agreed that the issue of trespass is limited to the trespass committed by the defendant's workers on the plaintiff's awning.

[89] The law regarding trespass is clear. The principles of trespass established in the case of *Terra Damansara Sdn Bhd v Nandex Development Sdn Bhd* [2006] 6 MLJ 24 are adhered to.

[90] Given the defendant's admission, I accept the plaintiff's claim of trespass in accordance with s 18(1) of the Evidence Act 1950. Consequently, I am satisfied that the plaintiff has met his burden under sub-s 101(1) of the Evidence Act 1950.

Damaged awning

[91] The plaintiff disagreed with the assertion made by the defendant's counsel that the awning is merely dirty and that there is no damage issue with the awning.

[92] According to para 13(b) of the statement of claim, it was pleaded as follows:

> kerosakan awning yang dipasang di tanah plaintif.

[93] The effects included discolouration and stains on the awning. However, the plaintiff could not present this court with a photograph of the alleged dirty condition of the awning, nor of its state prior to the encroachment.

[94] Given the evidence presented during the trial, I believe that the defendant ought to address the plaintiff's claim regarding the damaged awning. However, I refuse to award special damages as the plaintiff did not provide sufficient proof for them.

CONCLUSION

[95] After reviewing the pleadings and documents, and having heard the witnesses' testimony as well as the submissions from both the plaintiff's and defendant's counsel, on the balance of probabilities, I allowed part of the plaintiff's claim as follows:

(a) general damages for trespass amounting to RM50,000;

(b) the defendant is ordered to repair the damaged awning at the rear section of Unit No 47 Jalan PJU 3/12F, Tropicana Indah Resort Homes, 47410 Petaling Jaya, within one month from the date of the sealed order served on the defendant;

(c) interest at the rate of 5%pa on RM50,000, calculated from the date of the writ summon until the date of full settlement; and

(d) each party shall bear its own costs.

[96] I further ordered that the remaining relief sought in para 16 of the statement of claim be dismissed.

Defendant to pay the plaintiff RM50,000 as general damages for trespassing onto

the plaintiff's property; to repair the damaged awning on the plaintiff's property; and all other claims dismissed.

Reported by Ashok Kumar